



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,042	11/26/2003	Jinchun Xie	NLP-0202-US	7827

EXAMINER
WINAKUR, ERIC FRANK

ART UNIT	PAPER NUMBER
3768	

MAIL DATE	DELIVERY MODE
02/15/2007	PAPER

7590 02/15/2007
Herbert Burkard c/O Finesse LLC.
3350 Scott Blvd. Bldg. 1
Santa Clara, CA 95054

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/723,042

Applicant(s)

XIE, JINCHUN

Examiner

Eric F. Winakur

Art Unit

3768

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

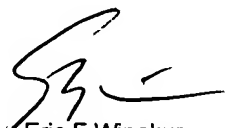
4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): The amendments address and overcome the claim objections.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-5,7,9,11-13,16 and 18-20.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


Eric F. Winakur
Primary Examiner
Art Unit: 3768

Continuation of 11. does NOT place the application in condition for allowance because: With regard to claims 16, 18, and 19, Applicant contends that Presby does not meet the claimed structure, since the claims are limited to the case where the nail, window plate, and gel have the same refractive index (it is noted that the claim recites "approximately equal"). As noted by Applicant, Presby teaches an arrangement where the gel or liquid and window have an index of refraction that substantially match, and in fact they both have an index of refraction of about 1.5, which is the index of refraction of a nail. Thus, contrary to Applicant's assertions, Presby teaches the claimed structure. The refraction illustrated in Figures 10 and 15 is between glass and air; however, as shown in Figure 10, the glass and gel disclose the claimed structure. Applicant further notes that the exterior plate of Presby is "translucent" and contends that this does not meet the claim, as it does not have the same index of refraction as the gel or window; however, it is noted that such a requirement is not set forth in claim 18. Thus, Presby meets all of the claimed structure and the rejection is proper.

With regard to the rejections based upon Chaiken et al. and Simonsen, Applicant notes that Chaiken involves a temperature probe, and contends that the claimed structure does not involve a temperature probe. However, such an arrangement is not excluded by the claim language, as the collected Raman radiation is emitted by blood present in the illuminated portion and analyzed to determine if a selected analyte is present. Indeed, Applicant's summary of Chaiken indicates that they recognize that these steps are met. Further, Applicant notes that Simonsen describes body parts that are suitable for spectroscopic analysis, including a nail bed; and, in fact, it is this teaching of Simonsen (which is referenced in Chaiken) that was relied upon in the rejection. Additional details of Simonsen (plural light paths) that are immaterial to the combination do not negate the properness of the combination. Although Applicant contends that the nail bed is not the same as the sterile matrix (as recited in the claims), these terms are generally considered to be synonyms, and therefore the combination teaches the claimed method.

In view of the above, the combinations of Simonsen, Chaiken, and Wach and Simonsen, Chaiken, and Lepper are maintained.

Contrary to Applicant's assertion that with the exception of Wach et al., the other references deal with absorption spectroscopy; at least Chaiken et al. is directed to Raman spectroscopy. The other references provide teachings relevant to all forms of non-invasive optical measurements, and are only relied upon for such teachings.

Applicant's assertion of improper hindsight is noted. As detailed in the prior Office action, the suggested combinations are found in the references themselves; therefore, Examiner did not improperly rely upon Applicant's teaching to combine the references.

Applicant's arguments are not persuasive for the reasons above, and the rejections are hereby maintained .